



June 13, 2012

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Ex Parte Communication, MB Docket 11-154**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,<sup>1</sup> the Digital Media Association ("DiMA") files this *ex parte* letter in response to the notice filed by Telecommunications for the Deaf and Hard of Hearing, Inc., *et. al.* ("TDI") on June 4, 2012 in the above-referenced docket.<sup>2</sup>

DiMA's members share TDI's desire to increase access to video programming delivered via Internet protocol ("IP") for individuals who are deaf or hard of hearing. Along with the rest of the online video industry, DiMA members are working diligently to implement the full suite of user configurations detailed in Section 79.103(c). DiMA's petitions for temporary partial exemption or limited waiver are narrowly tailored to give companies some extra time to construct, test and deploy an entirely new and complex closed captioning infrastructure, a task that simply cannot be accomplished in the artificially short time selected by the Commission.<sup>3</sup>

---

<sup>1</sup> 47 C.F.R. § 1.1206.

<sup>2</sup> Notice of *Ex Parte* Presentation, *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154 (June 4, 2012) ("TDI *Ex Parte* Notice").

<sup>3</sup> See DiMA, Petition For Temporary Partial Exemption Or Limited Waiver From The Provisions Of Section 79.4(c)(2)(i) Relating To The Rendering Of Captions, Including To The Applications, Plug-ins, Or Devices Provided By A VPD, MB Docket No. 11-154 (May 8, 2012) ("DiMA's

We respectfully disagree, however, with TDI's characterization of DiMA's petitions as "a gross abuse of administrative process."<sup>4</sup> As explained in DiMA's petitions, in addition to the specific exemption standards contained in the Twenty-First Century Communications and Video Accessibility Act ("CVAA"), the Commission has general authority to waive any provision of its rules "on its own motion or on petition if good cause therefor is shown."<sup>5</sup> In applying this general waiver standard, the Commission on numerous occasions has granted blanket waivers for an industry or waivers of its rules for classes of regulated entities.<sup>6</sup> The Commission's decision in *Anglers for Christ Ministries*, which addressed the analog closed captioning exemptions in the context of the obligations Congress added as part of the Telecommunications Act of 1996, does not affect the Commission's exercise of its general waiver authority or its authority under the CVAA.

In short, TDI's reliance on the Commission's decision in *Anglers for Christ Ministries* is misplaced with respect to DiMA's exemption requests under the CVAA.<sup>7</sup> DiMA's petitions rely explicitly on Section 713(c), as added by Section 202(b) of the CVAA, which authorizes the Commission to "exempt any service, *class of service*, program, *class of program*, equipment, or *class of equipment*" from the captioning requirements for IP-delivered video programming where such requirements would be economically burdensome.<sup>8</sup> DiMA's

---

Rendering Request"); DiMA, Petition For Temporary Partial Exemption Or Limited Waiver, MB Docket No. 11-154 (May 8, 2012) ("DiMA's 708 Request").

<sup>4</sup> TDI *Ex Parte* Notice, at 2. For the purposes of the Commission's rules for exemption requests, see 47 C.F.R. §79.4(d)(7), we are treating TDI's filing as an opposition and serving TDI with this filing, though TDI did not serve the undersigned.

<sup>5</sup> 47 C.F.R. § 1.3; see also *Implementation of Section 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, ¶ 188 (Oct. 7, 2011) (applying the Commission's general waiver standard in the context of the CVAA's requirements for advanced communications services).

<sup>6</sup> See, e.g., *Wireless Telecommunications Bureau Clarifies and Waives Requirements for Ship Station Radar Equipment*, Public Notice, DA 12-880 (June 5, 2012) (granting a blanket waiver of the requirement in Section 80.273(b) that radar equipment on voluntary vessels comply with International Electrotechnical Commission standard 62252); *Mid-Sized Incumbent Local Exchange Carriers: Filing of Cost Allocation Manuals for the Separation of Costs Between Regulated and Nonregulated Activities*, Order, 14 FCC Rcd 20780 (Dec. 10, 1999) (waiving the deadline for all incumbent local exchange carriers required to file cost allocation manuals at the Class B account level); 47 U.S.C. § 621(b)(3) ("Nothing in this section affects the Commission's authority under section 1.3 of its rules (47 C.F.R. 1.3) to waive any rule required by this Act, or the application of any such rule, for good cause shown . . . to a class of such stations, operators, or distributors.").

<sup>7</sup> See TDI *Ex Parte* Notice, at 2–3 (citing *In the Matter of Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14,941 (Oct. 20, 2011)). Indeed, the *Anglers for Christ Ministries* decision focuses at length on the requirements of Section 713(d), see 26 FCC Rcd 14,941, ¶¶ 6, 16, 20, 30-37, and discusses not at all the IP closed captioning requirements in Section 713(c) of the Communications Act because they were not at issue.

<sup>8</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 202(b), 124 Stat. 2751, 2771 (Oct. 8, 2010) (codified at 47 U.S.C. §613(c)(2)(D)(ii)) (emphasis added).

Rendering Request is properly limited to a “class of service” because it seeks an exemption or waiver of the requirements of Section 79.4(c)(2)(i) only for video programming distributors (“VPDs”) who render, as opposed to pass-through, captions and who provide applications, plug-ins, or devices to deliver video programming via IP. DiMA’s 708 Request is even narrower, applying only to VPDs who provide applications, plug-ins, or devices to deliver video programming via IP.

The Commission’s decision in *Anglers for Christ Ministries* also is distinguishable here because the petitioners in that proceeding sought permanent exemptions from the captioning requirements. In contrast, DiMA’s petitions request only a brief, 15 month extension of the Commission’s deadline so that VPDs — many of whom have no past experience with closed captioning and are being regulated by the Commission for the first time — have sufficient time to complete the tremendous amount of technical work required to come into compliance with the Commission’s rules.

TDI also erroneously claims that DiMA’s petition “would effectively vitiate the six-, twelve-, and eighteen-month deadlines carefully negotiated by the industry and consumer representatives on the [VPAAC] and undo the Commission’s careful deliberation and implementation of the closed captioning requirements for VPDs in this proceeding.”<sup>9</sup> This claim fails for two reasons. First, as a recent filing by the Motion Pictures Association of America, the National Cable & Telecommunications Association and the National Association of Broadcasters makes clear, “[w]hile the [VPAAC] report lays out a schedule of proposed deadlines for the provision of basic captioning of prerecorded, near-live, live, and edited-for-Internet programming, the VPAAC specifically states that those deadlines are not intended to provide a timeline for the roll-out of Enhanced Features.”<sup>10</sup> Thus it is not accurate to suggest that the industry agreed to a six-month timeline for implementation of the IP closed captioning enhanced features. “Indeed, had VPDs been aware that the Commission was contemplating adoption of such a deadline, they would have expressed concerns earlier during the rulemaking process.”<sup>11</sup> Second, the TDI filing simply ignores that the VPAAC discussed any deadlines as applying equally to both devices and services and that the manufacturers have until January 1, 2014 to comply.<sup>12</sup> The DiMA petitions therefore are consonant with the VPAAC Report in that the temporary extension would true up the VPDs’ obligations with the manufacturers’ obligation, a sensible outcome given that both parties will be deploying essentially the same solution.

---

<sup>9</sup> TDI *Ex Parte* Notice, at 3.

<sup>10</sup> Comments of the Motion Pictures Association of America, the National Cable & Telecommunications Association, and the National Association of Broadcasters, in Support of DiMA Petition for Temporary Partial Exemption or Limited Waiver, MB Docket No. 11-154, at 16 (June 6, 2012) (internal footnotes omitted) (“MPAA, NCTA and NAB Comments”).

<sup>11</sup> *Id.* at 17. *See also id.* at 16 (“Neither the VPAAC First Report nor the record of this proceeding provided any indication that the Commission would adopt an expedited 6-month schedule for VPDs to implement enhanced captioning features.”); *accord* Comments of DirecTV LLC, MB Docket No. 11-154 (June 4, 2012), at 2 (“[W]e would also note that the [6-month] deadline itself was proposed in neither the Notice of Proposed Rulemaking in this proceeding nor the underlying report of the Video Programming Accessibility Advisory Committee.”).

<sup>12</sup> MPAA, NCTA and NAB Comments at 15-16.

Finally, DiMA urges the Commission to reject TDI's request to treat the petitions as "untimely petitions for reconsideration"<sup>13</sup> since they are timely and appropriate exemption or waiver requests, and instead to act promptly on these petitions.

For the reasons provided above and in our previously filed submissions, we urge the Commission to expeditiously grant the relief requested in our petitions. Please contact me if you have any questions.

Respectfully submitted,

/s/

Lee Knife  
Executive Director  
Digital Media Association

cc: Bill Lake  
Mary Beth Murphy  
Steven Broeckaert  
Alison Neplokh  
Jeffrey Neumann  
Greg Hlibok  
Karen Peltz Strauss  
Traci Randolph  
Rosaline Crawford  
Eliot Greenwald  
Blake E. Reid, Esq., Counsel to TDI

---

<sup>13</sup> TDI *Ex Parte* Notice, at 3.